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REFERENCE TITLE: **building and fire safety; codes**

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

HB 2628

Introduced by
Representatives Blendu, Cooley, Avelar, O'Halleran, Miranda, Senators
Bundgaard, Aguirre: Representatives Brimhall, Carpenter, Chevront, Clark,
Giffords, Marsh, Norris, Soltero, Tom, Weason, Weiers, Senator Martin

AN ACT

AMENDING SECTIONS 9-801, 9-805 AND 11-829, ARIZONA REVISED STATUTES;
REPEALING TITLE 41, CHAPTER 3, ARTICLE 11, ARIZONA REVISED STATUTES; AMENDING
TITLE 41, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING A NEW ARTICLE 11;
REPEALING SECTION 41-3007.06, ARIZONA REVISED STATUTES; AMENDING TITLE 41,
CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION
41-3012.01; RELATING TO BUILDING AND FIRE SAFETY CODES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Legislative intent

3 In this act, it is the intent of the legislature to establish a
4 statewide building code commission to ensure an open consensus process that
5 maximizes building safety and economic efficiency.

6 Sec. 2. Section 9-801, Arizona Revised Statutes, is amended to read:

7 9-801. Definitions

8 In this article, unless the context otherwise requires:

9 1. "Code" means a published compilation of rules or regulations
10 prepared by a technical trade association and includes any building code,
11 electrical wiring code, health or sanitation code, fire prevention code,
12 inflammable liquids code, code for slaughtering, processing and selling meat
13 and meat products or for production, pasteurizing and sale of milk and milk
14 products, or other code which embraces rules and regulations pertinent to a
15 subject which is a proper subject of municipal legislation.

16 2. "Municipality" means a city or town organized in accordance with
17 law, including a home rule or charter city.

18 3. "Public record" includes a statute, rule or regulation of the
19 United States, this state or the municipality which is desired to be adopted
20 by reference.

21 4. "Published" means printed, lithographed, multigraphed, mimeographed
22 or otherwise reproduced.

23 ~~5. "State plumbing code" means the code adopted by the Arizona uniform~~
24 ~~plumbing code commission.~~

25 Sec. 3. Section 9-805, Arizona Revised Statutes, is amended to read:

26 9-805. State uniform construction codes

27 ~~A.~~ Notwithstanding any OTHER law ~~to the contrary~~, a municipality shall
28 not adopt a plumbing, ELECTRICAL, BUILDING, MECHANICAL OR FIRE code other
29 than the state ~~plumbing code~~ CODES ADOPTED PURSUANT TO SECTION 41-619.

30 ~~B. A municipality may grant a variance from the state plumbing code~~
31 ~~pursuant to section 41-619.~~

32 Sec. 4. Section 11-829, Arizona Revised Statutes, is amended to read:

33 11-829. Amendment of ordinance or change of zoning district
34 boundaries; definition

35 A. A property owner or authorized agent of a property owner desiring
36 an amendment or change in the zoning ordinance changing the zoning district
37 boundaries within an area previously zoned shall file an application for the
38 amendment or change. All zoning and rezoning ordinances, regulations or
39 specific plans adopted under this article shall be consistent with and
40 conform to the adopted county plan. In the case of uncertainty in
41 constructing or applying the conformity of any part of a proposed rezoning
42 ordinance to the adopted county plan, the ordinance shall be construed in a
43 manner that will further the implementation of, and not be contrary to, the
44 goals, policies and applicable elements of the county plan. A rezoning
45 ordinance conforms with the county plan if it proposes land uses, densities

1 or intensities within the range of identified uses, densities and intensities
2 of the county plan.

3 B. The board of supervisors shall adopt by ordinance, for each
4 rezoning application that requires a public hearing, a citizen review process
5 that includes components that identify the procedure through which:

6 1. Adjacent landowners and other potentially affected citizens will be
7 notified of the application.

8 2. The county will inform adjacent landowners and other potentially
9 affected citizens of the substance of the proposed rezoning.

10 3. Adjacent landowners and other potentially affected citizens will be
11 provided an opportunity to express any issues or concerns that they may have
12 with the proposed rezoning before the public hearing.

13 C. Upon receipt of the application the board shall submit it to the
14 commission for a report. Prior to reporting to the board, the commission
15 shall hold at least one public hearing thereon after giving at least fifteen
16 days' notice thereof by one publication in a newspaper of general circulation
17 in the county seat and by posting of the area included in the proposed
18 change. If the matter to be considered applies to territory in a high noise
19 or accident potential zone as defined in section 28-8461, the notice shall
20 include a general statement that the matter applies to property located in
21 the high noise or accident potential zone. In case of a rezoning, the
22 posting shall be in no less than two places with at least one notice for each
23 quarter mile of frontage along perimeter public rights-of-way so that the
24 notices are visible from the nearest public right-of-way. The commission
25 shall also send notice by first class mail to each real property owner as
26 shown on the last assessment of the property within three hundred feet of the
27 proposed amendment or change and each county and municipality which is
28 contiguous to the area of the amendment or change. In proceedings involving
29 rezoning of land that is located within territory in the vicinity of a
30 military airport as defined in section 28-8461, the commission shall send
31 copies of the notice of public hearing by first class mail to the military
32 airport. The notice sent by mail shall include, at a minimum, the date, time
33 and place of the hearing on the proposed amendment or change including a
34 general explanation of the matter to be considered, a general description of
35 the area of the proposed amendment or change, how the real property owners
36 within the zoning area may file approvals or protests of the proposed
37 rezoning, and notification that if twenty per cent of the property owners by
38 area and number within the zoning area file protests, an affirmative vote of
39 three-fourths of all members of the board will be required to approve the
40 rezoning. The following specific notice provisions also apply:

41 1. In proceedings that are initiated by the commission involving
42 rezoning, notice by first class mail shall be sent to each real property
43 owner, as shown on the last assessment of the property, of the area to be
44 rezoned and all property owners, as shown on the last assessment of the
45 property, within three hundred feet of the property to be rezoned.

1 2. In proceedings involving one or more of the following proposed
2 changes or related series of changes in the standards governing land uses,
3 notice shall be provided in the manner prescribed by paragraph 3 of this
4 subsection:

5 (a) A ten per cent or more increase or decrease in the number of
6 square feet or units that may be developed.

7 (b) A ten per cent or more increase or reduction in the allowable
8 height of buildings.

9 (c) An increase or reduction in the allowable number of stories of
10 buildings.

11 (d) A ten per cent or more increase or decrease in setback or open
12 space requirements.

13 (e) An increase or reduction in permitted uses.

14 3. In proceedings governed by paragraph 2 of this subsection, the
15 county shall provide notice to real property owners pursuant to at least one
16 of the following notification procedures:

17 (a) Notice shall be sent by first class mail to each real property
18 owner, as shown on the last assessment, whose real property is directly
19 affected by the changes.

20 (b) If the county issues utility bills or other mass mailings that
21 periodically include notices or other informational or advertising materials,
22 the county shall include notice of such changes with such utility bills or
23 other mailings.

24 (c) The county shall publish such changes prior to the first hearing
25 on such changes in a newspaper of general circulation in the county. The
26 changes shall be published in a display advertisement covering not less than
27 one-eighth of a full page.

28 4. If notice is provided pursuant to paragraph 3, subdivision (b) or
29 (c) of this subsection, the county shall also send notice by first class mail
30 to persons who register their names and addresses with the county as being
31 interested in receiving such notice. The county may charge a fee not to
32 exceed five dollars per year for providing this service and may adopt
33 procedures to implement this paragraph.

34 5. Notwithstanding the notice requirements set forth in paragraph 2 of
35 this subsection, the failure of any person or entity to receive notice shall
36 not constitute grounds for any court to invalidate the actions of a county
37 for which the notice was given.

38 D. If the planning commission or hearing officer has held a public
39 hearing, the board may adopt the recommendations of the planning commission
40 or hearing officer through use of a consent calendar without holding a second
41 public hearing if there is no objection, request for public hearing or other
42 protest. If there is an objection, a request for public hearing or a
43 protest, the board shall hold a public hearing thereon at least fifteen days'
44 notice of which shall be given by one publication in a newspaper of general
45 circulation in the county seat and by posting the area included in the

1 proposed change. In counties with territory in the vicinity of a military
2 airport as defined in section 28-8461, the board shall hold a public hearing
3 if, after notice is mailed to the military airport pursuant to subsection C
4 of this section and before the public hearing, the military airport provides
5 comments or analysis concerning the compatibility of the proposed rezoning
6 with the high noise or accident potential generated by military airport
7 operations that may have an adverse impact on public health and safety, and
8 the board shall consider and analyze the comments or analysis before making a
9 final determination. After holding the hearing the board may adopt the
10 amendment, but if twenty per cent of the owners of property by area and
11 number within the zoning area file a protest to the proposed change, the
12 change shall not be made except by a three-fourths vote of all members of the
13 board. If any members of the board are unable to vote on the question
14 because of a conflict of interest, the required number of votes for the
15 passage of the question is three-fourths of the remaining membership of the
16 board, except that the required number of votes in no event shall be less
17 than a majority of the full membership of the board. In calculating the
18 owners by area, only that portion of a lot or parcel of record situated
19 within three hundred feet of the property to be rezoned shall be included. In
20 calculating the owners by number or area, county property and public
21 rights-of-way shall not be included.

22 E. The planning commission may on its own motion propose an amendment
23 to the zoning ordinance and may, after holding a public hearing as required
24 by this chapter, transmit the proposal to the board which shall thereupon
25 proceed as set forth in this chapter for any other amendment.

26 F. Notwithstanding the provisions of title 19, chapter 1, article 4, a
27 decision by the governing body involving rezoning of land which is not owned
28 by the county and which changes the zoning classification of such land or
29 which changes the zoning standards of such land as set forth in subsection C,
30 paragraph 2 OF THIS SECTION may not be enacted as an emergency measure and
31 such a change shall not be effective for at least thirty days after final
32 approval of the change in classification by the board. Unless a resident
33 files a written objection with the board of supervisors, the rezoning may be
34 enacted as an emergency measure that becomes effective immediately by a
35 four-fifths majority vote of the board for those counties with five or more
36 supervisors or a two-thirds majority vote of the board for those counties
37 with less than five supervisors.

38 G. The legislature finds that a rezoning of land that changes the
39 zoning classification of the land or that restricts the use or reduces the
40 value of the land is a matter of statewide concern. Such a change in zoning
41 that is initiated by the governing body or zoning body shall not be made
42 without the express written consent of the property owner. In applying an
43 open space element or a growth element of a county plan, a parcel of land
44 shall not be rezoned for open space, recreation, conservation or agriculture
45 unless the owner of the land consents to the rezoning in writing. For the

purposes of this subsection, rezoning does not include the creation or expansion of overlay zones solely for the purpose of implementing airport safety and protection. Rezoning also does not include the redesignation of areas of the county to which the residential provisions of the county building codes or the state ~~plumbing-code~~ CONSTRUCTION CODES apply or do not apply. The county shall not adopt any change in a zoning classification to circumvent the purpose of this subsection.

H. For the purposes of this section, "zoning area" means the area within three hundred feet of the proposed amendment or change.

Sec. 5. Repeal

Title 41, chapter 3, article 11, Arizona Revised Statutes, is repealed.

Sec. 6. Title 41, chapter 3, Arizona Revised Statutes, is amended by adding a new article 11, to read:

ARTICLE 11. ARIZONA CODE COMMISSION

41-619. Arizona code commission; codes; variance

A. THE ARIZONA CODE COMMISSION IS ESTABLISHED CONSISTING OF SEVENTEEN MEMBERS APPOINTED FOR THREE YEAR TERMS BY THE GOVERNOR AS FOLLOWS:

1. FOR PLUMBING, A PLUMBING CONTRACTOR, A MECHANICAL ENGINEER AND A PLUMBING INSPECTOR EMPLOYED BY A MUNICIPALITY AS A PLUMBING INSPECTOR.

2. FOR ELECTRICAL, AN ELECTRICAL CONTRACTOR, AN ELECTRICAL ENGINEER AND AN ELECTRICAL INSPECTOR EMPLOYED BY A MUNICIPALITY AS AN ELECTRICAL ENGINEER.

3. FOR MECHANICAL, AN AIR CONDITIONING CONTRACTOR, A MECHANICAL ENGINEER AND A MECHANICAL INSPECTOR EMPLOYED BY A MUNICIPALITY AS A MECHANICAL INSPECTOR.

4. FOR FIRE, A SPRINKLER CONTRACTOR, A FIRE PROTECTION ENGINEER AND A FIRE DEPARTMENT INSPECTOR EMPLOYED BY A MUNICIPALITY AS A FIRE INSPECTOR.

5. FOR BUILDING, A GENERAL BUILDING CONTRACTOR, A STRUCTURAL ENGINEER, A CIVIL ENGINEER, AN ARCHITECT AND A STRUCTURAL INSPECTOR EMPLOYED BY A MUNICIPALITY AS A STRUCTURAL INSPECTOR.

B. THE ARIZONA CODE COMMISSION SHALL:

1. ELECT A CHAIRPERSON FROM AMONG ITS MEMBERS.

2. MEET AT LEAST ONCE EACH YEAR AND AT ADDITIONAL TIMES ON THE CALL OF THE CHAIRPERSON OR A MAJORITY OF ITS MEMBERS.

3. ADOPT, BY RULE, STATE PLUMBING, ELECTRICAL, BUILDING, MECHANICAL AND FIRE CODES AND STANDARDS THAT ARE DEVELOPED THROUGH A VOLUNTARY CONSENSUS PROCESS ACCREDITED BY THE AMERICAN NATIONAL STANDARDS INSTITUTE. THE STATE CODES SHALL NOT CONTAIN ANY PROVISION PERTAINING TO LICENSING, AND ANY PROVISION OF ANY CODE THAT MAY BE ADOPTED AS A STATE CODE AND THAT PERTAINS TO LICENSING SHALL NOT APPLY.

4. ADOPT, BY RULE, CODES AND STANDARDS AS THEY BECOME AVAILABLE THAT ARE DEVELOPED THROUGH A VOLUNTARY CONSENSUS PROCESS ACCREDITED BY THE AMERICAN NATIONAL STANDARDS INSTITUTE.

5. ESTABLISH FIVE COMMITTEES CONSISTING OF THE FIVE SPECIALTIES AND MEMBERS IN SUBSECTION A, PARAGRAPHS 1 THROUGH 5. THE COMMITTEES SHALL EACH REVIEW THE PROPOSED CODES AND STANDARDS WITHIN THEIR SPECIALTY AND MAKE RECOMMENDATIONS TO THE COMMISSION FOR ADOPTION. THE COMMISSION MAY MAKE CHANGES TO THE RECOMMENDATIONS ONLY BY A TWO-THIRDS VOTE OF THE MEMBERS OF THE COMMISSION.

C. A COUNTY BOARD OF SUPERVISORS MAY EXEMPT AREAS THAT ARE ZONED RURAL OR UNCLASSIFIED FROM ALL PROVISIONS OF AN ADOPTED CODE EXCEPT THOSE PROVISIONS THAT GOVERN ON-SITE INDIVIDUAL SEPTIC SYSTEMS OR INDIVIDUAL WASTEWATER TREATMENT SYSTEMS. THE PROVISIONS OF AN ADOPTED CODE THAT GOVERN ON-SITE INDIVIDUAL SEPTIC SYSTEMS OR INDIVIDUAL WASTEWATER TREATMENT SYSTEMS SHALL APPLY IN ALL AREAS.

D. THE COMMISSION MAY ADOPT AMENDMENTS TO THE CODES AND STANDARDS PREVIOUSLY ADOPTED IN GEOGRAPHICAL REGIONS THAT ARE ONLY APPLICABLE TO DESIGNATED GEOGRAPHICAL REGIONS WITHIN THIS STATE.

E. MEMBERS OF THE ARIZONA CODE COMMISSION ARE NOT ELIGIBLE FOR COMPENSATION OR REIMBURSEMENT OF EXPENSES.

F. THE ARIZONA CODE COMMISSION IS SUBJECT TO THE REQUIREMENTS OF CHAPTER 6 OF THIS TITLE.

G. THE REGISTRAR OF CONTRACTORS SHALL PROVIDE MEETING SPACE FOR THE ARIZONA CODE COMMISSION TO CONDUCT ITS MEETINGS.

Sec. 7. Repeal

Section 41-3007.06, Arizona Revised Statutes, is repealed.

Sec. 8. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3012.01, to read:

41-3012.01. Arizona code commission; termination July 1, 2012

A. THE ARIZONA CODE COMMISSION TERMINATES ON JULY 1, 2012.

B. TITLE 41, CHAPTER 3, ARTICLE 11 IS REPEALED ON JANUARY 1, 2013.

Sec. 9. Purpose

Pursuant to section 41-2955, subsection E, Arizona Revised Statutes, the purpose of the Arizona code commission is to promote statewide, uniform construction standards.

Sec. 10. Adoption of the Arizona construction codes by municipalities and counties

All municipalities and counties in this state shall adopt by ordinance the state construction codes. Any subsequent amendments to the state construction codes adopted by the Arizona code commission pursuant to section 41-619, Arizona Revised Statutes, shall be adopted by all municipalities and counties within six months after the commission's adoption.

Sec. 11. Initial terms of members of the Arizona code commission

A. Notwithstanding section 41-619, Arizona Revised Statutes, as added by this act, the initial terms of the members of the Arizona code commission are:

1. Six terms ending on January 1, 2004.

- 1 2. Six terms ending on January 1, 2005.
- 2 3. Five terms ending on January 1, 2006.
- 3 B. The governor shall appoint the members of the Arizona code
- 4 commission on or before October 31, 2002.
- 5 C. The governor shall make all subsequent appointments as prescribed
- 6 by statute.